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*Attorneys for Plaintiff Epic Games, Inc.*

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION**

EPIC GAMES, INC.,  
*Plaintiff, Counter-defendant,*  
 v.  
 APPLE INC.,  
*Defendant, Counterclaimant.*

Case No. 4:20-cv-05640-YGR-TSH  
 Case No. 4:11-cv-06714-YGR-TSH  
 Case No. 4:19-cv-03074-YGR-TSH

IN RE APPLE IPHONE ANTITRUST  
 LITIGATION

**DECLARATION OF GARY A.  
 BORNSTEIN IN SUPPORT OF  
 ADMINISTRATIVE MOTION TO FILE  
 THE JOINT DISCOVERY LETTER  
 BRIEF UNDER SEAL**

DONALD R. CAMERON, *et al.*,  
*Plaintiffs,*  
 v.  
 APPLE INC.,  
*Defendant.*

Judge: Hon. Magistrate Thomas S. Hixson

1 I, Gary A. Bornstein, declare as follows:

2 1. I am a partner at the law firm of Cravath, Swaine & Moore LLP, and am  
3 one of the attorneys representing Epic Games, Inc. (“Epic”) in the above-captioned actions. I am  
4 admitted to appear before this Court *pro hac vice* in *Epic v. Apple*. I am familiar with Epic  
5 Games, Inc.’s treatment of confidential information, based on my personal experience representing  
6 Epic. The contents of this declaration are based on my personal knowledge.<sup>1</sup> If called to be a  
7 witness, I could and would testify competently thereto.

8 2. I submit this declaration pursuant to Civil Local Rules 79-5(d)(1)(A) and  
9 79-5(e)(1) in support of Defendant Apple Inc.’s Administrative Motion to File Under Seal the  
10 Joint Discovery Letter Brief Regarding Discovery from Non-Party Samsung Electronics America,  
11 Inc. and supporting Exhibits 3-5 (the “Administrative Motion”). (*Epic Games, Inc. v. Apple Inc.*,  
12 No. 20-cv-05640-YGR-TSH, ECF No. 269; *In re Apple iPhone Antitrust Litigation*, No. 4:11-cv-  
13 06714-YGR-TSH, ECF No. 376; *Donald R. Cameron, et al. v. Apple Inc.*, No. 4:19-cv-03074-  
14 YGR-TSH, ECF No. 247).

15 3. On January 21, 2021, Defendant Apple, Inc. filed under seal a Joint Letter  
16 Brief Regarding Apple’s Subpoena to Non-Party Samsung Electronics America, Inc., as well as  
17 supporting Exhibits 3-5. (*Epic Games, Inc. v. Apple Inc.*, No. 20-cv-05640-YGR-TSH, ECF  
18 Nos. 269-3, 269-6, 269-7, 269-8; *In re Apple iPhone Antitrust Litigation*, No. 4:11-cv-06714-  
19 YGR-TSH, ECF Nos. 376-3, 376-6, 376-7, 376-8; *Donald R. Cameron, et al. v. Apple Inc.*,  
20 No. 4:19-cv-03074-YGR-TSH, ECF Nos. 247-3, 247-6, 247-7, 247-8.)

21 4. Epic seeks to maintain under seal in its entirety Exhibit 5 to the Joint  
22 Discovery Letter Brief Regarding Discovery from Non-Party Samsung Electronics America, Inc.  
23 filed on January 21, 2021 (“Exhibit 5”). (*Epic Games, Inc. v. Apple Inc.*, No. 20-cv-05640-YGR-  
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25 <sup>1</sup> Courts in this District routinely grant motions to seal on the basis of declarations of counsel  
26 submitted pursuant to Local Rule 79-5. *See, e.g., Cisco Sys., Inc. v. OpenTV Inc.*, No. 13-00282-  
27 EJD, ECF Nos. 76, 82 (N.D. Cal. Oct. 8, 2013); *Avago Techs., Inc. v. IPtronics Inc.*, No. 10-  
28 02863-EJD, ECF Nos. 544, 545 (N.D. Cal. Apr. 7, 2015). I am personally familiar with Epic’s  
safeguarding of proprietary information, but if the Court deems this declaration insufficient, Epic  
respectfully requests that it be permitted to file a further declaration supporting filing under seal.

1 TSH, ECF No. 269-8; *In re Apple iPhone Antitrust Litigation*, No. 4:11-cv-06714-YGR-TSH,  
2 ECF No. 376-8; *Donald R. Cameron, et al. v. Apple Inc.*, No. 4:19-cv-03074-YGR-TSH, ECF No.  
3 247-8).

4           5.       Exhibit 5 is a document Epic has designated as “HIGHLY  
5 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, consistent with Samsung Electronics  
6 America, Inc. and Epic’s view that disclosure of information contained therein to another Party or  
7 Non-Party would create a substantial risk of serious harm that could not be avoided by less  
8 restrictive means. (*See Epic Games, Inc. v. Apple Inc.*, No. 20-cv-05640-YGR-TSH, ECF No.  
9 112; *In re Apple iPhone Antitrust Litigation*, No. 4:11-cv-06714-YGR-TSH, ECF No. 199;  
10 *Donald R. Cameron, et al. v. Apple Inc.*, No. 4:19-cv-03074-YGR-TSH, ECF No. 85.)

11           6.       Specifically, Exhibit 5 consists of the Collaboration Agreement between  
12 Samsung Electronics Co., Ltd. (“Samsung”) and Epic Games, International S.à.r.l. (the  
13 “Collaboration Agreement”). This document contains commercially sensitive information,  
14 including negotiated financial terms concerning revenue share and other trade secrets. Disclosure  
15 of such information would harm both Epic and non-party Samsung by placing them at a  
16 competitive disadvantage because competitors would gain insight into key financial and strategic  
17 terms outlined in the Collaboration Agreement.

18           7.       The Collaboration Agreement also contains commercially sensitive  
19 information regarding Epic’s business relationship with Samsung concerning the promotion of  
20 *Fortnite*. Disclosure of such information would harm Epic by impeding Epic’s ability to maintain  
21 and develop further business relationships with Samsung and arrangements with similarly situated  
22 third parties.

23           8.       Epic keeps the details of its agreements with business partners, such as its  
24 Collaboration Agreement with Samsung, strictly confidential to avoid undue prejudice to Epic and  
25 its partners through the disclosure of commercially sensitive information.

26           9.       This request for relief is particularized and narrowly tailored to seal only  
27 information that if disclosed would cause Epic undue prejudice if publicly revealed.  
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1 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing  
2 is true and correct and that I executed this declaration on January 25, 2021 in Riverside, CT.

3  
4 /s/ Gary A. Bornstein

5 Gary A. Bornstein  
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